

(2017) 08 BOM CK 0087
In the Bombay High Court
Case No : 1749 of 2017

Reliance Life Sciences Pvt. Ltd., & Anr.	APPELLANT
Vs	
State of Maharashtra, & Ors.	RESPONDENT

Date of Decision : 02-08-2017

Acts Referred:

[3998](#) Constitution of India, [3998-226](#) Article 226 -
Power of High Courts to Issue certain writs

Citation : (2017) 08 BOM CK 0087

Hon'ble Judges : Anoop V. Mohta, Bharati H. Dangre

Bench : DIVISON BENCH

Advocate : Milind Sathe, Jyoti Sinha, Parth Gokhale, Akshat Agarwal, Abhay Patki

Judgement

1. Rule. Rule is made returnable forthwith. Heard finally by consent of parties.
2. The Petitioners have participated in the tender, for supply of various drugs including Human Anti-Hemophilic Factor VIII, issued by the Respondents-State of Maharashtra. The Petitioners are otherwise eligible being manufacturer of these drugs in Maharashtra. Three other parties also participated in the tender.
3. The challenge is restricted to the following tender condition no. 2.8 :
"2.8 Tenders are not allowed from manufacturer or Distributor for the product (s) for which the Firm found guilty of malpractice, misconduct, or blacklisted/debarred either by Public Health Department, Govt. of Maharashtra or by any local authority and other State Government/Central Government's organizations in the past three years for item quoted. No guarantee is given for issue of order of total quantity mentioned in the tender document. The bidder has to supply quantity as may be ordered by the Direct Demanding Officers during the currency of the contract."
4. The Petitioners received the following communication dated 4 May 2017-

" Company is blacklisted for AntiHemophilic Factor VIII by State Health Society, Bihar."

The Petitioners immediately replied on 5 May 2017 and forwarded the details along with copy of State of Bihar's order dated 11 October 2012, whereby the State of Bihar, by reasoned order has "deblacklisted" the Petitioners but deregistered for next 5 years for the products. We have noted that the Petitionerfirm was deregistered as they unable to supply AHF within prescribed time and required quantity and not for other reasons.

5. The Respondents, on 8 June 2017, without assigning any reason, even without noting the explanation so given in response to Petitioners" letter dated 5 May 2017, informed as under:

"With reference to your letter mentioned above, it is stated that your request to consider your bid as responsive in tender no. E112 cannot be accepted, since your firm has been deregistered for AntiHemophilic Factor VIII by State Health Society, Bihar."

This resulted into denying the participation in the bid for tender though otherwise the Petitioners are eligible as stated above.

6. The condition/clause so referred above, in our view, no where take into its ambit and specifically those concepts of "malpractice", "misconduct" and/or even "blacklisting". The issue of blacklisting, as recorded above, is cleared by the subsequent communication/reply dated 8 June 2017. The registration of contractor in particular area and/or State is the requirement for participation in the tender process. The deregistration, even if any, as recorded, for the reasons so reproduced, in no way, can be considered as "malpractice" and/or "misconduct". It is important that for treating or initiating any proceedings against any person revolving the concept of "malpractice" and/or "misconduct" required to be in consonance with the procedure of settled law. This is not the situation where the Petitioners" case, in any way, directly or indirectly falls within the ambit of "misconduct" and/or "malpractice". The deregistration cannot be treated as "misconduct" or "malpractice". There is no surviving case even of "blacklisting".

7. Therefore, in view of the clear concepts so recorded above, we are of the view that communication dated 8 June 2017 debarring the Petitioners from participation in the bid/tender is unjust, unsustainable and liable to be interfered with. The Petitioners are entitled to participate in the tender process as they are otherwise eligible and as there is no objection of any kind for Petitioners" participation, except communication dated 8 June 2017. The Petitioners have made out a case to invoke Article 226 of the Constitution of India. Hence the order: ORDER

(a) Communication dated 8 June 2017 is quashed and set aside.

(b) We direct the Respondents to consider the Petitioners" bid/tender dated

29.12.2016 in question as responsive and proceed in accordance with tender process.

(c) Rule made absolute accordingly.

(d) No costs.